

SECOND REGULAR SESSION

SENATE BILL NO. 1050

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 30, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4810S.011

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to the asbestos and silica claims priorities act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be known as sections 537.900, 537.903, 537.906, 537.909, 537.912, and 537.915, to read as follows:

537.900. Sections 537.900 to 537.915 shall be known and may be cited as the "Asbestos and Silica Claims Priorities Act".

537.903. 1. As used in sections 537.900 to 537.915, the following terms shall mean:

(1) "AMA Guides to the Evaluation of Permanent Impairment", the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under sections 537.900 to 537.915;

(2) "Asbestos", chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 CFR 1910 at the time an asbestos claim is made;

(3) "Asbestos claim", any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation or ingestion of asbestos, including loss of consortium, personal injury or death, mental or

19 emotional injury, risk or fear of disease or other injury, the costs of
20 medical monitoring or surveillance (to the extent such claims are
21 recognized), or any claim made by or on behalf of any person exposed
22 to asbestos or a representative, spouse, parent, child, or other relative
23 of the exposed person, the term "asbestos claim" does not include a
24 claim for compensatory benefits pursuant to a workers' compensation
25 law or a veterans' benefits program;

26 (4) "Asbestosis", bilateral diffuse interstitial fibrosis of the lungs
27 caused by inhalation of asbestos;

28 (5) "Board-certified internist", a qualified physician who is
29 certified by the American Board of Internal Medicine and whose
30 certification was current at the time of the performance of any
31 examination and rendition of any report required under sections
32 537.900 to 537.915;

33 (6) "Board-certified occupational medicine specialist", a qualified
34 physician who is certified in the subspecialty of occupational medicine
35 by the American Board of Preventive Medicine and whose certification
36 was current at the time of the performance of any examination and
37 rendition of any report required under sections 537.900 to 537.915;

38 (7) "Board-certified pathologist", a qualified physician who holds
39 primary certification in anatomic pathology or combined anatomic or
40 clinical pathology from the American Board of Pathology, whose
41 professional practice is principally in the field of pathology and
42 involves regular evaluation of pathology materials obtained from
43 surgical or post-mortem specimens, and whose certification was current
44 at the time of any slide or tissue examination and rendition of any
45 report required under sections 537.900 to 537.915;

46 (8) "Board-certified pulmonologist", a qualified physician who is
47 certified in the subspecialty of pulmonary medicine by the American
48 Board of Internal Medicine and whose certification was current at the
49 time of the performance of any examination and rendition of any report
50 required under sections 537.900 to 537.915;

51 (9) "Certified B-reader", a person who has successfully passed the
52 B-reader certification examination for X-ray interpretation sponsored
53 by the National Institute for Occupational Safety and Health and whose
54 certification was current at the time of any readings required under
55 sections 537.900 to 537.915;

56 (10) "Chest X-rays", radiographic films taken of the posterior-
57 anterior view and in accordance with all applicable state and federal
58 standards;

59 (11) "Claimant", any plaintiff asserting an asbestos or silica
60 claim; if a claim is brought through or on behalf of an estate, the term
61 includes the claimant's decedent; if a claim is brought through or on
62 behalf of a minor or incompetent, the term includes the claimant's
63 parent or guardian;

64 (12) "DLCO", diffusing capacity of the lung for carbon monoxide,
65 which is the measurement of carbon monoxide transfer from inspired
66 gas to pulmonary capillary blood;

67 (13) "Exposed person", a person whose claimed exposure to
68 respirable asbestos or respirable silica is the basis for an asbestos or
69 silica claim;

70 (14) "FEV-1", forced expiratory volume in the first second, which
71 is the maximal volume of air expelled in one second during
72 performance of simple spirometric tests;

73 (15) "FVC", forced vital capacity, which is the maximal volume of
74 air expired with maximum effort from a position of full inspiration;

75 (16) "ILO scale", the system for the classification of chest X-rays
76 set forth in the International Labor Office's Guidelines for the Use of
77 ILO International Classification of Radiographs of Pneumoconioses in
78 effect at the time of the performance of any examination or test on the
79 exposed person required under sections 537.900 to 537.915;

80 (17) "Pathological evidence of asbestosis", pathological asbestosis
81 graded 1(B) or higher under the criteria published in the Asbestos-
82 Associated Diseases, Special Issue of the Archives of Pathological and
83 Laboratory Medicine. Vol. 106, No. 11. Appendix 3 (Oct. 8, 1982);

84 (18) "Pathological evidence of silicosis", a statement by a board-
85 certified pathologist that more than one representative section of lung
86 tissue uninvolved with any other disease process demonstrates:

87 (a) Complicated silicosis with characteristic confluent silicotic
88 lesions equal to or greater than one centimeter in the lung parenchyma
89 and that there is no other more likely explanation for the presence of
90 the fibrosis; or

91 (b) Acute silicosis with characteristic pulmonary edema,
92 interstitial inflammation, and the accumulation within the alveoli of

93 **proteinaceous fluid rich in surfactant;**

94 **(19) "Predicted lower limit of normal", the calculated standard**
95 **convention lying at the fifth percentile, below the upper ninety-five**
96 **percent of the reference population, based on age, height, and gender,**
97 **according to the recommendations of the American Thoracic Society as**
98 **referenced in the AMA's Guides to the Evaluation of Permanent**
99 **Impairment;**

100 **(20) "Qualified physician", a licensed, board-certified internist,**
101 **occupational medicine specialist, pathologist or pulmonologist:**

102 **(a) Who has personally conducted a physical examination of the**
103 **exposed person, or in the case of a board-certified pathologist, has**
104 **examined tissue samples or pathological slides of the exposed person,**
105 **or if the exposed person is deceased, based upon a detailed review of**
106 **the medical records and existing tissue samples and pathological slides**
107 **of the deceased person;**

108 **(b) Who is treating or treated the exposed person and has or had**
109 **a doctor-patient relationship with the exposed person at the time of the**
110 **physical examination, or in the case of a board-certified pathologist,**
111 **has examined tissue samples or pathological slides of the exposed**
112 **person at the request of such treating physician;**

113 **(c) Who receives or received payment for the diagnosis,**
114 **examination, and treatment of the exposed person from the exposed**
115 **person or the exposed person's health care plan, and such payment is**
116 **not subject to reimbursement by or on behalf of anyone providing legal**
117 **service to the claimant; and**

118 **(d) Whose diagnosis, examination, testing, screening, or**
119 **treatment of the exposed person was not, directly or indirectly,**
120 **premised upon and did not require the exposed person or claimant to**
121 **retain the legal services of an attorney or law firm;**

122 **(21) "Radiological evidence of asbestosis", an ILO quality 1 or 2**
123 **chest X-ray read by a certified B-reader as showing, according to the**
124 **ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/1 or**
125 **higher;**

126 **(22) "Radiological evidence of diffuse bilateral pleural**
127 **thickening", an ILO quality 1 or 2 chest X-ray read by a certified B-**
128 **reader as showing, according to the ILO scale, diffuse bilateral pleural**
129 **thickening graded b2 or higher including blunting of the costophrenic**

130 **angle;**

131 **(23) "Radiological evidence of silicosis", an ILO quality 1 or 2**
132 **chest X-ray read by a certified B-reader as showing, according to the**
133 **ILO scale:**

134 **(a) Bilateral predominantly nodular opacities (p, q, or r)**
135 **occurring primarily in the upper lung fields graded 1/1 or higher; or**

136 **(b) A, B, or C sized opacities representing complicated silicosis**
137 **(also known as progressive massive fibrosis); or**

138 **(c) Acute silicosis with characteristic pulmonary edema,**
139 **interstitial inflammation, and the accumulation within the alveoli of**
140 **proteinaceous fluid rich in surfactant;**

141 **(24) "Silica", a respirable crystalline form of the naturally**
142 **occurring mineral form of silicon dioxide, including quartz,**
143 **crystalite, and tridymite;**

144 **(25) "Silica claim", any claim for damages, losses,**
145 **indemnification, contribution, or other relief of whatever nature**
146 **arising out of, based on, or in any way related to the alleged health**
147 **effects associated with the inhalation of silica, including loss of**
148 **consortium, personal injury or death, mental or emotional injury, risk**
149 **or fear of disease or other injury, the costs of medical monitoring or**
150 **surveillance (to the extent such claims are recognized), or any claim**
151 **made by or on behalf of any person exposed to silica, or a**
152 **representative, spouse, parent, child, or other relative of the exposed**
153 **person. The term "silica claim" does not include a claim for**
154 **compensatory benefits pursuant to a workers' compensation law or a**
155 **veterans' benefits program;**

156 **(26) "Silicosis", simple silicosis, acute silicosis, accelerated**
157 **silicosis, or chronic silicosis caused by the inhalation of respirable**
158 **silica;**

159 **(27) "Supporting test results", copies of the B-reading, pulmonary**
160 **function tests (including printouts of the flow volume loops, volume**
161 **time curves, DLCO graphs, and data for all trials and all other elements**
162 **required to demonstrate compliance with the equipment, quality,**
163 **interpretation and reporting standards set forth herein) lung volume**
164 **tests, reports of X-ray examinations, diagnostic imaging of the chest,**
165 **pathology reports, and all other tests reviewed by the diagnosing,**
166 **qualified physician in reaching the physician's conclusions;**

167 (28) "Total lung capacity", the volume of gas contained in the
168 lungs at the end of a maximal inspiration;

169 (29) "Veterans' benefits program", a program for benefits in
170 connection with military service administered by the Veterans'
171 Administration under Title 38, United States Code;

172 (30) "Workers' compensation law":

173 (a) A law respecting a program administered by a state or the
174 United States to provide compensatory benefits, funded by a
175 responsible employer or its insurance carrier, for occupational diseases
176 or injuries or for disability or death caused by occupational diseases
177 or injuries;

178 (b) Includes the Longshore and Harbor Workers' Compensation
179 Act (33 U.S.C. Section 901 et seq.) and the Federal Employees'
180 Compensation Act (chap. 81 of Title 5, United States Code); and

181 (c) Does not include:

182 a. The Act of April 22, 1908, commonly known as the Federal
183 Employers' Liability Act (45 U.S.C. Section 51 et seq.); or

184 b. Any claim for exemplary or punitive damages by an employee,
185 estate, heir, representative or any other person or entity against the
186 employer of an exposed person arising out of or related to asbestos-
187 related injury or silica-related injury.

537.906. 1. The claimant in any civil action alleging an asbestos
2 or silica claim filed in this state on or after the effective date of
3 sections 537.900 to 537.915 shall file together with the complaint or
4 other initial pleading a narrative medical report and diagnosis, signed
5 by a qualified physician and accompanied by supporting test results,
6 constituting prima facie evidence that the claimant meets the
7 requirements of this section. The written report shall be prepared by
8 the diagnosing qualified physician and shall not be prepared by a
9 lawyer or person working for or on behalf of any lawyer or law
10 firm. The defendant shall be afforded a reasonable opportunity to
11 challenge the adequacy of the proffered prima facie evidence. The
12 claim shall be dismissed without prejudice upon a finding that the
13 claimant has failed to make the required prima facie showing.

14 2. The claimant in any civil action alleging an asbestos or silica
15 claim filed in this state on or after the effective date of sections 537.900
16 to 537.915 shall include a sworn information form containing all of the

17 following:

18 (1) The name, address, date of birth, Social Security number,
19 marital status, occupation, and employer of the claimant, the exposed
20 person, and any person through which the claimant alleges exposure;

21 (2) The claimant's relationship to the exposed person or person
22 through which the claimant alleges exposure;

23 (3) The location and manner of each alleged exposure, including
24 for persons alleging exposure through another person, the premises at
25 which such other person was exposed; the beginning and ending dates
26 of each alleged exposure; and the identity of the manufacturer of the
27 specific asbestos or silica product at issue;

28 (4) The identity of the defendant or defendants against whom the
29 claimant asserts a claim;

30 (5) The specific asbestos-related or silica-related disease claimed
31 to exist;

32 (6) Information as to any lawsuits filed or claims made by or on
33 behalf of the claimant and exposed person, including any claims made
34 against bankruptcy trusts, and information as to the case caption,
35 docket number, identification of the court or bankruptcy trust in which
36 the claim is or was pending, and a description of the status of the case
37 or claim; and

38 (7) Any supporting documentation relating to subdivisions (3) to
39 (6) of this subsection.

40 3. All asbestos claims and silica claims along with sworn
41 information forms must be individually filed. No claims on behalf of a
42 group or class of persons shall be permitted.

43 4. No person shall bring or maintain an asbestos claim related to
44 an alleged nonmalignant asbestos-related condition in the absence of
45 prima facie evidence that the exposed person has a physical
46 impairment for which asbestos exposure was a substantial factor. The
47 prima facie showing shall be made as to each defendant and include a
48 detailed narrative medical report and diagnosis signed by a qualified
49 physician that includes all of the following:

50 (1) Evidence verifying that the diagnosing, qualified physician
51 has taken a detailed occupational, exposure, medical, and smoking
52 history from the exposed person or, if that person is deceased, from a
53 person who is knowledgeable regarding such history;

54 (2) Evidence sufficient to demonstrate that at least fifteen years
55 have elapsed between the exposed person's first exposure to asbestos
56 and the date of diagnosis;

57 (3) A determination by the diagnosing, qualified physician, on
58 the basis of a personal medical examination and pulmonary function
59 testing of the exposed person (or, if the exposed person is deceased,
60 based upon the person's medical records) that the claimant has (or
61 deceased person had) a permanent respiratory impairment rating of at
62 least class 2 as defined by and evaluated pursuant to the AMA's Guides
63 to the Evaluation of Permanent Impairment;

64 (4) Evidence verifying that the exposed person has asbestosis or
65 diffuse bilateral pleural thickening, based at a minimum on
66 radiological or pathological evidence of asbestosis or radiological
67 evidence of diffuse bilateral pleural thickening;

68 (5) Evidence verifying that the exposed person has asbestos-
69 related impairment, rather than chronic obstructive pulmonary disease,
70 as demonstrated by pulmonary function testing showing that, at a
71 minimum, the exposed person has:

72 (a) Forced vital capacity below the predicted lower limit of
73 normal and FEV1/FVC ratio (using actual values) at or above the
74 predicted lower limit of normal; or

75 (b) Total lung capacity, by plethysmography or timed gas
76 dilution, below the predicted lower limit of normal; and

77 (6) Verification that the diagnosing, qualified physician has
78 concluded that the exposed person's impairment was not more probably
79 the result of causes other than asbestos exposure. A conclusion by the
80 physician which states that the impairment is consistent with or
81 compatible with asbestos exposure or asbestos-related disease does not
82 meet the requirements of this subdivision.

83 5. No person shall bring or maintain an asbestos claim related to
84 an alleged asbestos-related cancer, other than mesothelioma, in the
85 absence of a prima facie showing of a primary cancer for which
86 exposure to asbestos was a substantial factor. The prima facie showing
87 shall be made as to each defendant and include a narrative medical
88 report and diagnosis signed by a qualified physician that includes all
89 of the following:

90 (1) Evidence verifying that the diagnosing, qualified physician

91 has taken a detailed occupational, exposure, medical, and smoking
92 history from the exposed person or, if that person is deceased, from a
93 person who is knowledgeable regarding such history;

94 (2) Evidence sufficient to demonstrate that at least fifteen years
95 have elapsed between the exposed person's first exposure to asbestos
96 and the date of diagnosis;

97 (3) Evidence verifying that the exposed person has asbestosis,
98 based at a minimum on radiological or pathological evidence of
99 asbestosis; and

100 (4) Verification that the diagnosing, qualified physician has
101 concluded that the claimant's cancer was not more probably the result
102 of causes other than asbestos exposure. A conclusion by the physician
103 which states that the cancer is consistent with or compatible with
104 asbestos exposure or asbestos-related disease does not meet the
105 requirements of this subdivision.

106 6. No prima facie showing is required to bring or maintain an
107 asbestos claim related to alleged mesothelioma.

108 7. No person shall bring or maintain a silica claim related to
109 alleged silicosis in the absence of a prima facie showing of physical
110 impairment as a result of a medical condition for which exposure to
111 silica was a substantial factor. The prima facie showing shall be made
112 as to each defendant and include a detailed narrative medical report
113 and diagnosis signed by a qualified physician that includes all of the
114 following:

115 (1) Evidence verifying that the diagnosing, qualified physician
116 has taken a detailed occupational, exposure, medical, and smoking
117 history from the exposed person or, if that person is deceased, from a
118 person who is knowledgeable regarding such history;

119 (2) Evidence verifying that the exposed person has silicosis,
120 based at a minimum on radiological or pathological evidence of
121 silicosis;

122 (3) Evidence verifying there has been a sufficient latency period
123 for the applicable type of silicosis;

124 (4) A determination by the diagnosing, qualified physician, on
125 the basis of a personal medical examination and pulmonary function
126 testing of the exposed person (or, if the exposed person is deceased,
127 based upon the person's medical records) that the claimant has (or

128 deceased person had) a permanent respiratory impairment rating of at
129 least Class 2 as defined by and evaluated pursuant to the AMA's Guides
130 to the Evaluation of Permanent Impairment; and

131 (5) Verification that the diagnosing, qualified physician has
132 concluded that the exposed person's impairment was not more probably
133 the result of causes other than silica exposure. A conclusion by the
134 physician which states that the impairment is consistent with or
135 compatible with silica exposure or silica-related disease does not meet
136 the requirements of this subdivision.

137 8. No person shall bring or maintain a silica claim related to an
138 alleged silica-related cancer in the absence of a prima facie showing of
139 a primary cancer for which exposure to silica was a substantial
140 factor. The prima facie showing shall be made as to each defendant
141 and include a narrative medical report and diagnosis signed by a
142 qualified physician that includes all of the following:

143 (1) Evidence verifying that the diagnosing, qualified physician
144 has taken a detailed occupational, exposure, medical, and smoking
145 history from the exposed person or, if that person is deceased, from a
146 person who is knowledgeable regarding such history;

147 (2) Evidence verifying that the exposed person has silicosis,
148 based at a minimum on radiological or pathological evidence of
149 silicosis;

150 (3) Evidence sufficient to demonstrate that at least fifteen years
151 have elapsed between the exposed person's first exposure to silica and
152 the date of diagnosis; and

153 (4) Verification that the diagnosing, qualified physician has
154 concluded that the claimant's cancer was not more probably the result
155 of causes other than silica exposure. A conclusion by the physician
156 which states that the cancer is consistent with or compatible with silica
157 exposure or silica-related disease does not meet the requirements of
158 this subdivision.

159 9. No person shall bring or maintain a silica claim related to an
160 alleged silica-related condition, other than silicosis or silica-related
161 cancer, in the absence of a prima facie showing of physical impairment
162 as a result of a medical condition for which exposure to silica was a
163 substantial factor. The prima facie showing shall be made as to each
164 defendant and include a narrative medical report and diagnosis signed

165 by a qualified physician that includes all of the following:

166 (1) Evidence verifying that the diagnosing, qualified physician
167 has taken an occupational, exposure, medical, and smoking history
168 from the exposed person or, if that person is deceased, from a person
169 who is knowledgeable regarding such history;

170 (2) Evidence verifying that the exposed person is physically
171 impaired as a result of a silica-related disease;

172 (3) Evidence verifying there has been a sufficient latency period
173 for the applicable type of alleged silica-related disease; and

174 (4) Verification that the diagnosing, qualified physician has
175 concluded that the exposed person's impairment was not more probably
176 the result of causes other than silica exposure. A conclusion by the
177 physician which states that the impairment is consistent with or
178 compatible with silica exposure or silica-related disease does not meet
179 the requirements of this subdivision.

180 10. Evidence relating to physical impairment under sections
181 537.900 to 537.915, including pulmonary function testing and diffusing
182 studies, shall:

183 (1) Comply with the quality controls, equipment requirements,
184 methods of calibration and techniques set forth in the AMA's Guides to
185 the Evaluation of Permanent Impairment and all standards set forth in
186 the Official Statements of the American Thoracic Society which are in
187 effect on the date of any examination or pulmonary function testing of
188 the exposed person required by sections 537.900 to 537.915;

189 (2) Not be obtained and may not be based on testing or
190 examinations that violate any law, regulation, licensing requirement,
191 or medical code of practice of the state in which the examination, test,
192 or screening was conducted, or of this state; and

193 (3) Not be obtained under the condition that the claimant retains
194 the legal services of the attorney or law firm sponsoring the
195 examination, test, or screening.

537.909. 1. Evidence relating to the prima facie showings
2 required under sections 537.900 to 537.915 shall not create any
3 presumption that the claimant has an asbestos or silica-related injury
4 or impairment, and shall not be conclusive as to the liability of any
5 defendant.

6 2. No evidence shall be offered at trial, and the jury shall not be

7 informed of:

8 (1) The grant or denial of a motion to dismiss an asbestos or
9 silica claim under the provisions of sections 537.900 to 537.915; or

10 (2) The provisions of sections 537.900 to 537.915 with respect to
11 what constitutes a prima facie showing of asbestos or silica-related
12 impairment.

13 3. Until such time as the trial court enters an order determining
14 that the claimant has established prima facie evidence of impairment,
15 no asbestos or silica claim shall be subject to discovery, except
16 discovery related to establishing or challenging the prima facie
17 evidence or by order of the trial court upon motion of one of the parties
18 and for good cause shown.

19 4. (1) A court may consolidate for trial any number and type of
20 asbestos or silica claims with the consent of all the parties. In the
21 absence of such consent, the court may consolidate for trial only
22 asbestos claims or silica claims relating to the exposed person and
23 members of his or her household.

24 (2) No class action or any other form of mass aggregation claim
25 filing relating to more than one exposed person, except claims relating
26 to the exposed person and members of his or her household, shall be
27 permitted for asbestos or silica claims.

28 (3) The provisions of this section do not preclude consolidation
29 of cases by court order for pretrial or discovery purposes.

537.912. 1. (1) As of the effective date of sections 537.900 to
2 537.915, a claimant's cause of action shall not accrue, nor shall the
3 running of limitations commence, prior to the earlier of the date:

4 (a) The exposed person received a medical diagnosis of an
5 asbestos-related impairment or silica-related impairment;

6 (b) The exposed person discovered facts that would have led a
7 reasonable person to obtain a medical diagnosis with respect to the
8 existence of an asbestos-related impairment or silica-related
9 impairment; or

10 (c) The date of death of the exposed person having an asbestos-
11 related or silica-related impairment.

12 (2) Nothing in this section shall be construed to revive or extend
13 limitations with respect to any claim for asbestos-related impairment
14 or silica-related impairment that was otherwise time-barred as a matter

15 of applicable state law as of the date sections 537.900 to 537.915 is
16 enacted.

17 (3) Nothing in this section shall be construed so as to adversely
18 affect, impair, limit, modify or nullify any settlement or other
19 agreements with respect to an asbestos or silica claim entered into
20 prior to the date of enactment of sections 537.900 to 537.915.

21 2. An asbestos or silica claim arising out of a nonmalignant
22 condition shall be a distinct cause of action from a claim for an
23 asbestos-related or silica-related cancer. Where otherwise permitted
24 under state law, no damages shall be awarded for fear or increased risk
25 of future disease in any civil action asserting an asbestos or silica
26 claim.

537.915. Sections 537.900 to 537.915 shall take effect on its date
2 of enactment and shall apply to all asbestos or silica claims filed on or
3 after the effective date.

✓

Bill

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